



APPROVED

**BOARD OF ADJUSTMENT
CITY OF SCOTTSDALE
3939 NORTH DRINKWATER BOULEVARD
SCOTTSDALE, ARIZONA
SEPTEMBER 5, 2007**

REGULAR MEETING MINUTES

PRESENT: Jennifer Goralski, Chair
Patrick Davis, Vice-Chair
Carol Perica, Board Member
Terry Kuhstoss, Board Member
Geoffrey Kerksmar, Board Member
Monica Lindstrom, Board Member (arrived 6:18 p.m.)

ABSENT: Howard Myers, Board Member

STAFF PRESENT: Tim Curtis
Sherry Scott
Frank Gray
Connie Padian
Hank Epstein
Edmond Lamperez
Meredith Tessier

CALL TO ORDER

The regular meeting of the Scottsdale Board of Adjustment was called to order by Chair Goralski at 6:04 p.m.

ROLL CALL

A formal roll call confirmed the members present as stated above.

APPROVED OCTOBER 3, 2007/TG

APPROVAL OF MINUTES

1. July 11, 2007 Board of Adjustment Study Session Minutes

BOARD MEMBER KUHSTOSS MOVED TO APPROVE THE JULY 11, 2007 STUDY SESSION MINUTES OF THE BOARD OF ADJUSTMENT. SECONDED BY BOARD MEMBER PERICA, THE MOTION CARRIED UNANIMOUSLY BY A VOTE OF FIVE (5) TO ZERO (0).

2. July 11, 2007 Board of Adjustment Regular Minutes

BOARD MEMBER PERICA MOVED TO APPROVE THE JULY 11, 2007 MINUTES OF THE BOARD OF ADJUSTMENT. SECONDED BY BOARD MEMBER KUHSTOSS, THE MOTION CARRIED UNANIMOUSLY BY A VOTE OF FIVE (5) TO ZERO (0).

REGULAR AGENDA

3. 3-BA-2007 Scottsdale Horizon Commercial Center

Request by Arther Mones for an appeal of the Zoning Administrator's decision of stipulations from case # 94-DR-1996#2 regarding wall-mounted lighting/illuminated signs.

Ms. Padian reviewed the history of the center, explaining that the Development Review Board approved master sign program set the criteria for the center. Separate cases were approved within the center, each with requirements to conform to the master sign and lighting requirements. She presented site plans, which highlighted similar centers in the area as well as the interaction between the site and surrounding neighborhoods. She noted that all signs within the center were required to be illuminated with neon.

Mr. Arthur Monez addressed the Board. He opined that the illuminated signs should be considered the same as lighting. He reviewed the Zoning Administrator's decision and the definition of "lighting." Noting that his goal was to minimize not eliminate light intrusion, he suggested that a solution would be to require sign illumination to be turned off by 11 p.m. nightly for all businesses except those that were still open at that hour.

Terry Roach, 6711 Five Star Boulevard Rockland CA, representing center owners and tenants not in attendance spoke in opposition to the appeal. She noted that no other centers in the area are restricted on signage lighting and that surrounding street lighting and traffic signals were just as bright. Tenants should have the right to illuminate their signs when they deem necessary.

Mr. Buddy Reed spoke on behalf of Winegard Realty investors. He opined that wall signs are different than lights; he reviewed the interpretation of a wall sign, which notes that the face of signs diffuse light so there are less lumens than a light fixture.

Denny Toyfol, new lessee within the center, addressed the Board in opposition to the appeal. He remarked that as a new owner he recently purchased signs to conform with the center requirements; changing the signage requirements could create a hardship for business owners. He noted that the parking lights were brighter and more intrusive than signs.

Mr. Gray clarified that the question was whether the Development Review Board intended for lighting and signs to be adopted as two separate regulations. He opined that the facts showed that lighting and illuminated signage are different.

Mr. Monez reiterated that turning off signs at 11 p.m. would not be detrimental to any businesses because there is no traffic in the center at that hour. He noted that the Ordinance states that signs are for the purpose of identification and are not intended as advertising tools. He mentioned that other centers in the area use halo backlighting and turn the signs off at 11 p.m.

Board Member Kerksmar noted that there was a separate master sign program for the center; significant elements of the master sign program govern the entire shopping center. The master sign program requires tenants to have lit signs identifying their business. He noted a statement in the master sign program that the approved City of Scottsdale comprehensive sign program would have precedence over any conflicting criteria. He opined that the zoning administrator correctly described the existing stipulations and master sign program and correctly concluded that signs are not the same as wall-mounted lighting.

Board Member Kuhstoss concurred with Board Member Kerksmar's comments. She made particular note that the master sign program made a distinction between signs and lighting.

Vice-Chair Davis commented that a lot of thought was put into developing the master sign program and distinguishing between lighting and signage. He noted that he would support the zoning administrator's decision.

Board Member Perica opined that several parts of the master plan were confusing and the zoning administrator's decision should be overturned.

Board Member Lindstrom noted that she would abstain because she was not present for the entire discussion.

Chair Goralski opined that it was clear throughout the case that lighting and signage issues were repeatedly addressed. She believed the zoning administrator's decision should be upheld.

BOARD MEMBER KUHSTOSS MOVED TO DENY 3-BA-2007 AND UPHOLD THE ZONING ADMINISTRATOR'S DECISION. SECONDED BY BOARD MEMBER KERCSMAR, THE MOTION CARRIED BY A VOTE OF FOUR (4) TO ONE (1). BOARD MEMBER LINDSTROM ABSTAINED. BOARD MEMBER PERICA DISSENTED.

4. 4-BA-2007 Sundown Manor Lot 32

Request for a variance to reduce corner front yard setback. Section 5.204.E.1.c.

Mr. Lamperez reviewed the proposed site plan and the zoning ordinance requirements. He noted that the property to the east of the site was unbuildable land owned by the City of Scottsdale. Staff opined that there were no specific features or land issues that presented special circumstances. Authorizing a variance would not be necessary for preservation of privileges and rights because other properties in the zoning district are subject to the same front yard setbacks. Authorizing a variance would not be materially detrimental to persons residing or working in the vicinity.

Mr. David Ross with Ross Design Group addressed the Board. He explained that because of the orientation of the house and the adjacent vacant land it was assumed that side yard setbacks were required. He noted that the vacant property was owned by the City of Scottsdale and was unbuildable because of the 101. Recently it was brought to the Applicant's attention that another option would be to request an abandonment of the adjacent property.

In response to a question by Board Member Kerksmar, Mr. Ed Benton clarified that the guesthouse was used as both a home office and bedrooms.

Board Member Kuhstoss opined that the four criteria had not been met because the special circumstances were being created by the owner. She suggested that they investigate the abandonment option.

Vice-Chair Davis agreed that the four criteria had not been met. He felt a variance would not be necessary for the privileges and rights of the owner. He commented that the fact that the accessory building was built before purchase was not a special circumstance.

Board Member Perica felt the four criteria had not been met. She specifically noted that a variance would not be necessary to maintain the owner's rights and privileges and that the owner created the circumstances.

Board Member Lindstrom opined that the four criteria had been met. She reiterated that if the variance did not pass, the option of abandonment was an alternative. She noted that another option would be to restructure the plans so a variance would not be required. She remarked that the purpose of a front yard setback on a corner lot was to maintain the look and feel of the neighborhood, which is no longer the case in this circumstance because of the unbuildable adjacent lot.

Board Member Kerksmar opined that the four criteria were not met. He suggested filing for an abandonment.

Chair Goralski felt the four criteria had been met. She agreed that an abandonment might be the best alternative.

BOARD MEMBER KUHSTOSS MOVED TO DENY 4-BA-2007. SECONDED BY BOARD MEMBER DAVIS, THE MOTION CARRIED BY A VOTE OF FOUR (4) TO TWO (2). CHAIR GORALSKI AND BOARD MEMBER LINDSTROM DISSENTED.

5. 5-BA-2007 Huffaker Residence

Request for a variance to reduce corner front yard setback.

Ms. Tessier presented the approved and proposed site plans and reviewed the history of the project. During inspections the 25-foot encroachment was discovered. She noted that the plans approved by staff complied with R1-35 zoning requirements and the construction was not done to the plans. Allowing the variance was not necessary for preservation of privileges and rights because all main structures in key lot and corner lot situations are prohibited from encroaching. Staff agreed that the variance would not be detrimental to persons in the vicinity because the addition is virtually imperceptible.

In response to a question by Board Member Perica, Ms. Tessier reiterated that the plans were drafted incorrectly; at the time of review the plans were in compliance with R1-35 development standards.

In response to a question by Board Member Lindstrom, Ms. Tessier explained that a difference in the plot plan was discovered during inspections involving a separate variance case for the property. Mr. Curtis noted that a front porch encroachment had been rectified and brought into conformance. Board Member Lindstrom remarked that she was attempting to pinpoint whether the fault lies with the Applicant or the City.

Mr. Mike Daniel from Legacy Custom Building and Remodeling addressed the Board. He noted that the City plans were not incorrect. He explained that the Maricopa County Assessor's map coordinated with the drawing overlay. He noted that inspectors were not to be blamed for inaccuracies because the open space condition of the property creates difficulty in locating the lot lines.

Mr. Daniel stressed the fact that private inspectors discovered the encroachment and the Applicant immediately notified the City of the problem. He pointed out that construction documents were revised three times, the permit was revised twice, and all inspections were made and passed with the exception of the final inspection.

Chair Goralski noted several non-speaking public comment cards were submitted in favor of approving the variance.

Board Member Lindstrom agreed that special circumstances existed not created by the Applicant and that the variance would not be detrimental to neighbors. She felt the variance would not be required in order to preserve the privileges and rights enjoyed by others. She noted that she would not vote to approve the variance.

Board Member Perica felt all four criteria had been met. She noted that mistakes had been made although she would not "point fingers."

Board Member Kerksmar remarked that the situation would be frustrating for anyone who relied on paid experts and the City to compile plans for a house that conformed to regulations. He opined that because the City was not at fault criteria two and three were not satisfied.

Board Member Kuhstoss felt the four criteria had not been met. She noted in particular that the Applicant or its agents created the situation.

Vice-Chair Davis opined that the four criteria had not been met.

Chair Goralski noted that she would support the variance request. She opined that 25 inches was a nominal amount for a request. She remarked that the City breached its duty by missing problems with the footings on several inspections and should take responsibility.

BOARD MEMBER KUHSTOSS MOVED TO DENY 5-BA-2007. SECONDED BY BOARD MEMBER LINDSTROM, THE MOTION CARRIED BY A VOTE OF FOUR (4) TO TWO (2). CHAIR GORALSKI AND BOARD MEMBER PERICA DISSENTED.

ADJOURNMENT

With no further business to discuss, the meeting adjourned at 7:30 p.m.

Respectfully submitted,
A-V Tronics, Inc.